IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

WEDNESDAY, THE 3RD OCTOBER 2007 / 11TH ASWINA 1929

WP(C).No. 34480 of 2005(D)

PETITIONERS:
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1. **K.MADHUSOODANAN,**
   DRAUGHTSMAN GR.II, SEWERAGE PROJECT DIVISION,
   KERALA WATER AUTHORITY, OBSERVATORY HILLS,
   THIRUVANANTHAPURAM.

2. **N.RAMESH, DRAUGHTSMAN GR.II,**
   PURCHASE SECTION, HEAD OFFICE,
   KERALA WATER AUTHORITY,THIRUVANANTHAPURAM.

BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY
SMT. N. SANTHA
SRI.PETER JOSE CHRISTO

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY ITS**
   CHIEF SECRETARY, SECRETARIAT,
   THIRUVANANTHAPURAM.

2. **THE SECRETARY TO GOVERNMENT,**
   WATER RESOURCES DEPARTMENT,
   SECRETARIAT, THIRUVANANTHAPURAM.

3. **KERALA WATER AUTHORITY, REPRESENTED**
   BY ITS MANAGING DIRECTOR, JALA BHAVAN,
   VELLAYAMBALAM, THIRUVANANTHAPURAM.

BY ADV. SRI.C.UNNIKRISHNAN, SC, KWA
BY GOVERNMENT PLEADER SRI. NANDAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/09/2007, THE COURT ON 3/10/2007 DELIVERED THE FOLLOWING:

KSS

WPC.NO.34480/2005 D

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE LETTER NO.KWA/JB/PR/AM/8972/99 DTD. 18/05/2000 OF THE MANAGING DIRECTOR, KERALA WATER AUTHORITY ADDRESSED TO THE EXECUTIVE ENGINEER, WATER SUPPLY DIVISION, KERALA WATER AUTHORITY, KOCHI.**

EXT.P2: **COPY OF THE RELEVANT EXTRACT OF THE REPORT ON 16/06/2000.**

EXT.P3: **COPY OF THE LETTER NO.KWA/JB/E1-9634/2001 DTD. 8/11/2001 OF THE 3RD RESPONDENT ADDRESSED TO GOVERNMENT.**

EXT.P4: **COPY OF THE G.O.(MS) NO.808/2001 (106)/FIN. DTD. 8/06/2001.**

EXT.P5: **COPY OF THE GOVERNMENT LETTER NO.28785/C2/2001/Ird DTD. 15/03/2002 ADDRESSED TO THE MANAGING DIRECTOR, KERALA WATER AUTHORITY.**

EXT.P6: **COPY OF THE LETTER NO.KWA/JB/E1/9634/01 DTD. 18/12/2002 OF THE 3RD RESPONDENT.**

EXT.P7: **COPY OF THE JUDGMENT IN O.P.NO.4417/03-A DTD. 2/06/2005 OF THIS HON'BLE COURT.**

EXT.P8: **COPY OF THE G.O.(RT) NO.1136/05/WRD DTD. 13/10/2005.**

/TRUE COPY/

P.S.TO JUDGE

KSS

V.GIRI, J.

W.P.(C).No.34480 of 2005 D

Dated this the 3rd day of October, 2007.

JUDGMENT

The challenge in this writ petition is in relation to Ext.P8 order passed by the Government, directing rectification of an anomaly in the pay scale of an Overseer Grade II, in the Kerala Water Authority.

2. The Government came to pass Ext.P8 order pursuant to a direction issued by this court in Ext.P7 judgment. In Ext.P7 judgment, this court had considered the same issue relating to the anomaly in the scales of pay applicable to Overseers Grade II/Draftsmen Grade II in the services of the Kerala Water Authority. The anomalies projected in that regard by the petitioners, who were occupying the posts of Overseers Grade II is vis-à-vis the scales of pay of Overseer Grade III, who got time bound Higher Grade promotion and are, therefore, accommodated in a higher scale of pay. This court found that the committee constituted for the purpose of looking into the said anomaly had recommended rectification of the same. But as per Ext.P5 order, the Government declined to rectify the said anomaly on the premise that any change in the scale of pay of the

category will disturb the existing inter se parity which is prevalent in the Kerala Water Authority and that it will attract further demands. This court found that the said stand taken by the Government was both extraneous and irrelevant. The order of the Government was set aside and the Government was directed to reconsider the issue. This led to Ext.P8 order, whereby the Government directed rectification of an anomaly in the manner provided in the order. Petitioners are dissatisfied with Ext.P8 order and hence the writ petition.

3. The petitioners' entered the services of the Kerala Water Authority as Overseers Grade II/Draftsmen Grade II, as advised by the Public Service Commission. The scale of pay of Draftsman Grade II in the Water Authority, prevailing at the time when the writ petition was filed, was Rs.3770-5785. By G.O. (MS)No.82/98 dated 31.7.1998, the Government had appointed a committee for re-fixing the scales of pay of various posts in the Water Authority. Recommendations were made by the committee. Government issued orders thereon as per order dated 19.8.1999. The scale of pay of Overseer Grade II, at that point of time, was Rs.1195-1845. This was revised to Rs.3770-

5785. The scale of pay of Overseer Grade III, at that point of time was Rs.970-1565, which was revised to Rs.3440-5385. The petitioners made a reference to the scale of pay of Lower Division Clerk/Lower Division Cashier, at that point of time, which was Rs.970-1565 was revised to Rs.3205-5135. The pre-revised scale of pay of Overseer Grade III was the same as that of a Lower Division Clerk viz., 970-1565. But on revision, the scale of pay Overseer Grade III was revised to Rs.3440-5385. Thus, pre-revised scale of pay of a Lower Division Clerk and Overseer Grade III at Rs.970-1565, stood revised to Rs.3205-5135 in the case of Lower Division Clerk and Rs.3440-5385 in the case of Overseer Grade III.

4. The petitioners, at the same time, prayed to give effect to the scale of pay of an Upper Division Clerk in relation to Overseer Grade II. The scale of pay of Upper Division Clerk pre-revised was Rs.1275-2100. This was revised to Rs.4210-6235. At the same time, the scale of pay of Overseer Grade II, which was Rs.1195-1845, was revised only to Rs.3205-5135. Petitioners point out those aspects for the purpose of comparing the alleged detriment suffered by Overseer Grade II, consequent upon the

revision of scales of pay effected in 1999 vis-à-vis Overseer Grade III as also Upper Division Clerk. But the anomaly, as such, pointed out by the petitioners, in the scale of pay applicable to Overseer Grade II is essentially in relation to the scale of pay obtained by Overseers Grade III, who are granted time bound Higher Grade Promotion and not on the basis of the scale of pay pre-revised or revised applicable to an Upper Division Clerk. The pre-revised and revised scale of pay of an Upper Division Clerk is referred to by the petitioners only for the purpose of broadly making out a case of an alleged detriment suffered by the staff in the technical wing with comparable posts in the administrative wing.

5. The aforesaid anomaly as projected by the petitioners is essentially as follows:

6. The scale of pay sanctioned to the post of Draftsman Grade II is Rs.3770-5785. Draftsman Grade II is the promotion post of Draftsman Grade III. The scale of pay of Draftsman Grade III revised is Rs.3440-5385. Draftsmen Grade III, who complete 10 years of service, are entitled to the first time bound Higher Grade, on sanction of which, their scale of pay

would be Rs.4210-6235. According to the petitioners, a Draftsman Grade III who gets promotion as Draftsman Grade II or is directly recruited to the post of Draftsman Grade II will be sanctioned a scale of pay of only Rs.3770-5785. At the same time, Draftsman Grade III, who does not get promotion for 10 years, who continues in the lower post, will be sanctioned the scale of pay of Rs.4210-6235. This, according to the petitioners, is a clear anomaly. Petitioners contend that though there is a difference in the scale of pay of Overseer Grade II, namely Rs.3770-5785 as compared to that of Overseer Grade III, which is Rs.3440-5385, the anomaly comes in at a point of time when an Overseer Grade III gets the first time bound Higher Grade promotion. Thereupon, an Overseer Grade III is sanctioned a scale of pay of Rs.4210-6235, obviously higher than the scale of pay of Overseer Grade II, which is Rs.3770-5785. Petitioners contend that a person, who continues in a lower post as Overseer Grade III, cannot obviously draw salary in a scale of pay, which is higher than that applicable to an incumbent in a higher post – Overseer Grade II. It is this anomaly which was pointed out by the petitioners, that was sought to be rectified. The rectification

of the anomaly was recommended by the committee and though it was initially rejected by the Government, by Ext.P8 order, the Government directed the rectification of the anomaly in the following manner.

> **"In view of Rule 7 of Annexure 5 of G.O.(P) No54/99/IRD dated 19.8.1999 the anomaly of an Overseer-III who gets promoted as Overseer II before completing 10 years of service is rectified. Hence Government Order that the Managing Director, Kerala Water Authority shall apply the above rule to rectify the anomaly and pay salary arrears payable, if not done already."**

7. The Government noted that the rectification of this anomaly is covered by Rule 7 of Annexure 5 of the Government Order containing the Rules relating to time bound Higher Grade promotion. Under this Rule, if Overseer Grade II (which is a post occupied by the petitioners) in the scale of pay of Rs.3770-5785 completes 10 years of service in both the posts taken together (thus covering a case of direct recruit to the post of Overseer Grade II as also promotees from the post of Overseer Grade III), he has to be given the higher scale of pay of Rs.4210-6235, subject to the condition that the fixation under Rule 28(A) of Part I of the Kerala Service Rules for the 10 year Grade will be based

on the lower scale of pay of Rs.3440-5385. According to the Government, one this is done, then the anomaly as regards the scale of pay of Overseer Grade II vis-a-vis the scale of pay obtained by a person, who either continues as Overseer Grade III or who has been promoted to the post of Overseer Grade II on obtaining a time bound Higher Grade Promotion after completing 10 years disappears. It is this view taken by the Government that is challenged by the petitioners.

8. I heard learned counsel for the petitioners Mr.S.P.Aravindakshan Pillai and Mr.Nandakumar, learned senior Government Pleader on behalf of the respondents.

9. The essential contention of the petitioners, who are Overseers Grade II directly recruited to the said post is that the scale of pay applicable to any person occupying the post of Overseer Grade II, should not, at any point of time, be lower than that of the scale of pay applicable or drawn by the incumbent in a lower post viz., Overseer Grade III. It is contended by Mr.Pillai that the essence of Article 14 of the Constitution of India, in the context of equal pay for equal work, would also take in a principle that the scale of pay drawn by an incumbent in a higher post

cannot and should not be lower than the scale of pay applicable to an incumbent in a lower post. The only manner in which the anomaly could be rectified, according to the learned cousnel for the petitioners was to raise the scale of pay of an Overseer Grade III, which in the present case, at the material point of time, was Rs.3770-5785, at least to the scale of pay of Rs.4210-6235, which is the scale of pay drawn by an Overseer Grade III on being sanctioned the first time bound Higher Grade after completion of 10 years. If this is adopted, then obviously, an Overseer Grade III, who gets a time bound Higher Grade Promotion on completion of 10 years service will not get a scale of pay higher than that applicable to Overseer Grade II, which is a promotion post.

10. In my view, the anomaly, as projected by the petitioners, has been rectified by the Government as per Ext.P8 order. The anomaly pointed out by the learned counsel for the petitioners is strictly not a case of scale of pay in a lower post being higher than that of the scale of pay applicable to a higher post. The disparity between the scale of pay drawn by an Overseer Grade II and Overseer Grade III arises only when a

comparison is embarked upon between the scale of pay of an Overseer Grade II, notionally at the time of his entry into the service vis-a-vis the scale of pay applicable to an Overseer Grade III, on being sanctioned a time bound Higher Grade Promotion after completion of 10 years. In other words, the alleged disparity pointed out by the petitioners is not between the scale of pay of an Overseer Grade III and an Overseer Grade II drawn or applicable at the same point of time. The comparison is embarked upon in an artificial manner. The scale of pay drawn by any incumbent either in the post of Overseer Grade III or Overseer Grade II on getting a time bound Higher Grade Promotion after completion of 10 years of service cannot be the indicator or yardstick for finding out whether there is any anomaly in the scale of pay applicable to or drawn by a person, who just enters service.

11. Essentially, what is sought for by the petitioners is the revision of scale of pay applicable to Overseer Grade II. Once it is noted that the scale of pay of Overseer Grade II is higher than that of Overseer Grade III, then an argument based on article 14 of the Constitution would really not be available. It is,

therefore, that the petitioners have embarked upon a comparison between the scales of pay of Overseer Grade II vis-a-vis the scale of pay applicable to an incumbent in the post of Overseer Grade III, after he obtains a time bound Higher Grade Promotion. In my view, the attempt at comparison is misconceived.

12. The reliefs sought for by the petitioners is essentially a direction to the Government to revise the scale of pay of Overseer Grade II, with effect from 1999. A reference is made to the scale of pay obtained by an Overseer Grade III on being grated a time bound Higher Grade Promotion after completion of 10 years only as an argument to substantiate their contentions on violation of Article 14 of the Constitution. It is not for this court to direct the Government to revise the scale of pay of an Overseer Grade II, on the basis of an alleged anomaly, brought about by a comparison with the scale of pay drawn by a person after obtaining a time bound Higher Grade Promotion, inasmuch as that the yardstick adopted by the petitioners is obviously not available to a person who enters the post of Overseer Grade II as a direct recruit. Insofar as the scale of pay that would be drawn by a person who enters service as Overseer

Grade III, gets promoted as Overseer Grade II and is thereafter sanctioned a time bound Higher Grade Promotion after completion of 10 years service, the anomaly which, otherwise, would have arisen is taken care of by the Government in para 7 of Ext.P8 order. I do not find any substance in the contentions raised by the petitioners in this regard.

13. Mr.Nandakumar, learned Senior Government Pleader, after completion of arguments and when the matter was posted as 'to be spoken to' brought to my notice the Government Order on the recommendations of the IVth Pay Revision Commission relating to the benefits of the employees of the water Authority viz., G.O.(P)No.46/07 dated 30.7.2007. The revised scale of pay of an Overseer Grade II is now Rs.6690-11070, the same as that of an Upper Division Clerk. The grievance, if any, entertained by the petitioners, in relation to the scale of pay available at an earlier point of time, now stands redressed. In my view, the anomaly pointed out by the petitioners, as a matter of fact, had been rectified earlier by the Government by Ext.P8 order. Any residuary grievance that the petitioners had, also now stands redressed, no doubt, with effect from the period as now

ordered by the Government as per the G.O.(P)No.46/07 dated 30.7.2007.

For all these reasons, I find no merit in the writ petition and the same is dismissed.

Sd/-
(V.GIRI)
JUDGE

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